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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 29973
	:	
Thomas DISTEFANO III	:	Confirmation Number: 8542
	:	
Application No.: 09/589,551	:	Group Art Unit: 3688
	:	
Filed: June 7, 2000	:	Examiner: D. Lastra
	:	
For: METHOD FOR DEVELOPING ELECTRONIC DOCUMENTS PROVIDING E-COMMERCE TOOLS		

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed October 12, 2010, wherein Appellant appeals from the Examiner's rejection of claims 4-6, 22, 25-26, and 29.

I. REAL PARTY IN INTEREST

This application is assigned to The Perfect Web Corporation by assignment recorded on June 7, 2000, at Reel 010861, Frame 0100.

II. RELATED APPEALS AND INTERFERENCES

On June 15, 2009, a Decision on Appeal was rendered in the present Application, and on September 13, 2009, a Decision on Request for Rehearing was rendered in the present Application. Appellant is unaware of any other related appeals and interferences.

III. STATUS OF CLAIMS

Claims 4-6, 22, 25-26, and 29 are pending and rejected in this Application. Claims 1-3, 7-21, 23-24, 27-28, and 30-31 have been cancelled. It is from the multiple rejections of claims 4-6, 22, 25-26, and 29 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

Appellant has submitted herewith an Amendment in which claims 23-24, 27-28, and 30-31 have been cancelled. Since the cancellation of these claims will reduce the number of issues on Appeal, Appellant proceeds under the assumption that this Amendment will be entered

V. SUMMARY OF CLAIMED SUBJECT MATTER

1 Referring to Figure 20 and also to independent claim 4, a method of assisting a website
2 designer in establishing an arrangement between a first website being designed by the website
3 designer and a second website is disclosed. The arrangement is established to market the first
4 website at the second website upon the activation of the first website on the internet. At step
5 2006, during design of the first website, information indicating a type of an element for
6 marketing is received at a user interface (page 49, line 23 through page 50, line 2 of Appellant's
7 disclosure). At step 2020, the information specifies the second website at which the element is to

1 be displayed. The information is saved at a first database that is coupled to the user interface
2 (page 50, lines 15-17). The element for marketing of the type indicated is obtained, and the
3 element for marketing is displayed at the second website when the first website is activated with
4 respect to the internet (page 50, lines 17-19). The element for marketing includes at least one of
5 a banner ad concerning the first website and a link to the first website (page 50 line 25 through
6 page 51, line 13). In step 2022, a determination is made whether a reciprocal site for the display
7 of at least one marketing element of a third party website exists in the first website being
8 designed (page 50, lines 19-22). In step 2024, the reciprocal site for the display of the at least
9 one marketing element of the third party website is created when the reciprocal site does not yet
10 exist in the first website being designed (page 50, lines 22-24).

11 Referring to Figure 20 and also to independent claim 4, a method, within a computer
12 hardware website implementation system, of establishing a reciprocal arrangement between a
13 first website and a preexisting second website is disclosed. The second website is registered with
14 the website implementation system (page 33, lines 14-16). A request by a first user is received
15 by the website implementation system to implement the first website (page 43, lines 1-20). In
16 2028, the website implementation system receives a selection by the first user as to a second
17 functional marketing element to be activated on the second website (page 51, lines 1-7). In
18 2022, the website implementation system establishes a reciprocal site in the first website for a
19 first functional marketing element (page 50, lines 19-24). Upon the first website being activated
20 with respect to the internet, the computer website implementation system implementing the
21 reciprocal arrangement by causing the first website to implement the first functional marketing
22 element, and the second website to implement the second functional marketing element (page 51,
23 line 23 through page 52, line 2). The first functional marketing element directs, via the internet,

1 a second user of the first functional marketing element to the second website, and the second
2 functional marketing element directs, via the internet, a third user of the second functional
3 marketing element to the first website (page 51, line 23 through page 52, line 2).

4 Referring to Figures 1 and 20 and also to independent claim 25, a computer hardware
5 website implementation system 140 for establishing a reciprocal arrangement between a first
6 website and a preexisting second website is disclosed. The computer hardware website
7 implementation system 140 comprises at least one processor configured to perform the
8 following. The second website is registered with the website implementation system (page 33,
9 lines 14-16). A request by a first user is received by the website implementation system to
10 implement the first website (page 43, lines 1-20). In 2028, the website implementation system
11 receives a selection by the first user as to a second functional marketing element to be activated
12 on the second website (page 51, lines 1-7). In 2022, the website implementation system
13 establishes a reciprocal site in the first website for a first functional marketing element (page 50,
14 lines 19-24). Upon the first website being activated with respect to the internet, the computer
15 website implementation system implementing the reciprocal arrangement by causing the first
16 website to implement the first functional marketing element, and the second website to
17 implement the second functional marketing element (page 51, line 23 through page 52, line 2).
18 The first functional marketing element directs, via the internet, a second user of the first
19 functional marketing element to the second website, and the second functional marketing
20 element directs, via the internet, a third user of the second functional marketing element to the
21 first website (page 51, line 23 through page 52, line 2).

22 Referring to Figure 20 and also to independent claim 29, a computer program product
23 including a computer-readable storage medium having stored therein computer usable program

1 code for establishing a reciprocal arrangement between a first website and a preexisting second
2 website is disclosed. The computer usable program code, which when executed by a computer
3 hardware implementation system, causes the computer hardware implementation system to
4 perform the following. The second website is registered with the website implementation system
5 (page 33, lines 14-16). A request by a first user is received by the website implementation
6 system to implement the first website (page 43, lines 1-20). In 2028, the website implementation
7 system receives a selection by the first user as to a second functional marketing element to be
8 activated on the second website (page 51, lines 1-7). In 2022, the website implementation
9 system establishes a reciprocal site in the first website for a first functional marketing element
10 (page 50, lines 19-24). Upon the first website being activated with respect to the internet, the
11 computer website implementation system implementing the reciprocal arrangement by causing
12 the first website to implement the first functional marketing element, and the second website to
13 implement the second functional marketing element (page 51, line 23 through page 52, line 2).
14 The first functional marketing element directs, via the internet, a second user of the first
15 functional marketing element to the second website, and the second functional marketing
16 element directs, via the internet, a third user of the second functional marketing element to the
17 first website (page 51, line 23 through page 52, line 2).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 4-6, 22, 25-26, and 29 were rejected under 35 U.S.C. § 103 for obviousness based upon Mason et al., U.S. Patent No. 6,401,075 (hereinafter Mason), in view of Moore et al., U.S. Patent No. 6,330,575 (hereinafter Moore), and Ross et al., U.S. Patent No. 6,629,135 (hereinafter Ross).

VII. ARGUMENT

PROSECUTION HISTORY

In the Decision on Appeal dated June 15, 2009, the Honorable Board sustained the rejections of claims 1-3 and 7-21. The Honorable Board, however, reversed the rejection of claims 4-6 based upon the combination of Mason and Moore. Subsequently, claim 4 was placed into independent form. The Examiner then rejected claims 4-6 based upon the combination of Mason, Moore, and Alberts in the Fourth Office Action. After Appellant traversed (without amendment) the Examiner's rejection of claim 4 based upon the combination of Mason, Moore, and Alberts, the Examiner again rejected claim 4 based upon the combination of Mason, Moore, and Ross. Thus, appealed claim 4, in its present form, recites substantially the same limitations as those reviewed by the Honorable Board when reversing the Examiner's prior rejection of claim 4.

PRINCIPLES OF LAW

Examiner's Burden

The Examiner has the initial burden to set forth the basis for any rejection so as to put Appellant on notice of the reasons why Appellant is not entitled to a patent on the claim scope that Appellant seeks – the so-called "*prima facie* case." In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Additionally, the "[t]he examiner's action will be complete as to all matters," 37 C.F.R. § 1.104(b), and "[t]he pertinence

1 of each reference, if not apparent, must be clearly explained." 37 C.F.R. § 1.104(c). Reference
2 is also made to 37 C.F.R. § 1.2, which states "[t]he action of the Patent and Trademark Office
3 will be based exclusively on the written record in the Office."
4

5 Referring generally to the "Examination Guidelines for Determining Obviousness Under
6 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex
7 Inc.," 72 Fed. Reg. 57,526 (2007) (hereinafter the Examination Guidelines for Determining
8 Obviousness), and specifically to the paragraph entitled "Office Personnel as Factfinders" on
9 page 57,527 of the Examination Guidelines for Determining Obviousness, the following was
10 stated:

11 Office personnel fulfill the critical role of factfinder when resolving the
12 *Graham* inquiries. It must be remembered that while the ultimate determination of
13 obviousness is a legal conclusion, the underlying *Graham* inquiries are factual.
14 When making an obviousness rejection, Office personnel must therefore ensure
15 that the written record includes findings of fact concerning the state of the art and
16 the teachings of the references applied. In certain circumstances, it may also be
17 important to include explicit findings as to how a person of ordinary skill would
18 have understood prior art teachings, or what a person of ordinary skill would have
19 known or could have done. Factual findings made by Office personnel are the
20 necessary underpinnings to establish obviousness.
21

22 *Appellant's Burden*

23 If the Examiner does not produce a *prima facie* case of unpatentability, then the rejection
24 cannot be maintained, and Appellant is not obligated to respond. See *In re Oetiker*, *supra* ("If
25 examination at the initial stage does not produce a *prima facie* case of unpatentability, then
26 without more the applicant is entitled to grant of the patent"). Only after a *prima facie* case of

unpatentability does the burden shift to Appellant to rebut the *prima facie* case. See In re Kahn, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("[o]n appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness") (quoting In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

Standard of Review

Decisions of the Patent Office are reviewed in accordance with the standards of the Administrative Procedure Act. See Dickinson v. Zurko, 527 U.S. 150, 165 (1999) (applying the Administrative Procedure Act, 5 U.S.C. § 706, to appeals of PTO rulings). Thus, the Patent Office's factual findings are reviewed to determine whether they are unsupported by substantial evidence. See In re Gartside, 203 F.3d 1305, 1312 (Fed. Cir. 2000). Substantial evidence means "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). Anticipation under 35 U.S.C. § 102 is a question of fact, and the findings of fact underlying the conclusion of anticipation are reviewed for substantial evidence. In re Hyatt, 211 F.3d 1367, 1371-72, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The underlying findings of facts supporting the legal conclusion of obviousness are also reviewed for substantial evidence. In re Gartside, 203 F.3d at 1316.

In the Decision of Ex parte Frye, (Appeal No. 2009-006013) (Precedential), while referring to a rejection under 35 U.S.C. § 103, the Honorable Board stated:

The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence

1 produced thereon. *See Oetiker*, 977 F.2d at 1445 ("In reviewing the examiner's
2 decision on appeal, the Board must necessarily weigh all of the evidence and
3 argument.") (emphasis added); *see also* 37 C.F.R. § 41.37(c)(1)(vii) (appeal brief
4 must include "the contentions of appellant with respect to each ground of
5 rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis
6 therefor, with citations of the statutes, regulations, authorities, and parts of the
7 record relied on"). Specifically, the Board reviews the particular finding(s)
8 contested by an appellant anew in light of all the evidence and argument on that
9 issue.

10
11 Therefore, a complete *de novo* review is to be performed on all issues that are raised by
12 Appellant without deference to the positions taken by the Examiner.

13
14 With regard to the burden placed on the Honorable Board in analyzing the rejections, the
15 Federal Circuit held the following in Gechter v. Davidson, 1167 F.3d 1454, 1460 (Fed. Cir.
16 1997):

17 In sum, we hold that the Board is required to set forth in its opinions
18 specific findings of fact and conclusions of law adequate to form a basis for our
19 review. In particular, we expect that the Board's anticipation analysis be
20 conducted on a limitation by limitation basis, with specific fact findings for each
21 contested limitation and satisfactory explanations for such findings. [FN3] Claim
22 construction must also be explicit, at least as to any construction disputed by
23 parties to the interference (or an applicant or patentee in an ex parte proceeding).
24 [FN3] While not directly presented here, obviousness determinations, when
25 appropriate, similarly must rest on fact findings, adequately explained, for each of
26 the relevant obviousness factors in the Supreme Court's decision in Graham.

27
28 Obviousness

1 In Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court set
2 forth the factual inquiries that are to be applied when establishing a background for determining
3 obviousness under 35 U.S.C. 103. These factual inquiries are summarized as follows:

- 4 (A) "the scope and content of the prior art are to be determined";
5 (B) "the differences between the prior art and the claims at issue are to be
6 ascertained";
7 (C) "the level of ordinary skill in the pertinent art [is to be] resolved"; and
8 (D) "indicia of nonobviousness" are to be evaluated
9

10 However, in order to make a proper comparison between the claimed invention and the prior art,
11 the language of the claims must first be properly construed. See, e.g., Gechter v. Davidson, 116
12 F.3d at 1460 (requiring explicit claim construction as to any terms in dispute; In re Paulsen, 30
13 F.3d 1475, 1479 (Fed. Cir. 1994); Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68
14 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question,
15 "what is the invention claimed?" since "[c]laim interpretation, ... will normally control the
16 remainder of the decisional process").
17

18 As stated by the Supreme Court: "rejections on obviousness grounds cannot be sustained
19 by merely conclusory statements; instead there must be some articulated reasoning with some
20 rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co. v. Teleflex
21 Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)). As
22 also stated by the Supreme Court, "a patent composed of several elements is not proved obvious
23 merely by demonstrating that each of its elements was, independently, known in the prior art."
24

1 **THE REJECTION OF CLAIMS 4-6, 22, 25-26, AND 29 UNDER 35 U.S.C. § 103 FOR**
2 **OBVIOUSNESS BASED UPON MASON, MOORE, AND ROSS**

3 For convenience of the Honorable Board in addressing the rejections, claims 5-6, 22, 25-
4 26, and 29 stand or fall together with independent claim 4.

5
6 **Fourth Office Action**

7 After the Examiner's rejection of claim 4 had been reversed and in response to the
8 Examiner reopening prosecution in the Fourth Office Action dated December 15, 2009
9 (hereinafter the Fourth Office Action), and in the Amendment dated March 15, 2010, Appellant
10 referred to page 15 of the Decision on Appeal in which the Honorable Board concluded

11 Claim 4 depends from claim 1 and requires a reciprocal site. The
12 Appellant argues that the Examiner failed to show such reciprocity in the site
13 described in the references (Reply Br. 9). We agree with the Appellant. The
14 Examiner appears to have ignored this limitation in the analysis by construing the
15 term "reciprocal" to mean simply a third party (Ans. 19).

16
17 The Examiner's previously presented rejection of claim 4 is based upon Mason and Moore
18 (previously cited) and the newly cited (at the time) Alberts. Since the Honorable Board has
19 already concluded that the combination of Mason and Moore fails to teach the limitations at
20 issue, the newly cited Alberts will be addressed.

21
22 On page 4 of the Fourth Office Action, the Examiner presented the following findings
23 with regard to newly cited Alberts:

24 Alberts teaches a system where a plurality of advertisers selects to display banner ads in a web
25 page and where said banner ads are displayed in rotation in said web page (see col 3, line 1 - col 4,
26 line 45). Alberts also teaches that said banner ads includes an ad identifier that includes a uniform
27 resource locator (URL) or a pointer to a graphical and/or textual object (see col 3, lines 37-42).

1
2 Notably absent from the Examiner's characterization of Alberts is any mention of the reciprocity
3 that the Honorable Board identified as being missing from the combination of Mason and Moore.
4 Referring to column 4, lines 34-39, the teachings of Alberts can be summarized as "ad servers 14
5 provide rotational control that ensures that ads are served a desired number of times per day and
6 with a desired distribution throughout the day, even with a large number of ads, a wide variation
7 in ratios of hits, and/or wide variations of hits per day over multiple days." Entirely absent from
8 both the teachings of Albert and the Examiner's remaining analysis on page 4 of the Fourth
9 Office Action is any mention of reciprocity. Thus, the Examiner has failed to cure the
10 deficiencies specifically noted by the Honorable Board in the Decision on Appeal.

11
12 Fifth Office Action

13 In the appealed Fifth Office Action dated June 10, 2010 (hereinafter the Fifth Office
14 Action), the Examiner withdrew the prior rejection based upon Mason, Moore, and Alberts and
15 introduced a new rejection based upon Mason, Moore, and newly cited Ross. As previously
16 noted, the Honorable Board has identified the concept of "reciprocity" as being missing from the
17 combination of Mason and Moore. To be clear, the term "reciprocity" is shorthand for the actual
18 limitations being claimed. Specifically, the limitations at issue are as follows:

19 determining whether a reciprocal site for the display of at least one
20 marketing element of a third party website exists in the first website being
21 designed; and

22 creating the reciprocal site for the display of the at least one marketing
23 element of the third party website when the reciprocal site does not yet exist in the
24 first website being designed.

25
26 Additionally, when considering the claimed invention, as a whole, these steps occur while the

first website is being designed (i.e., created).

Referring to page 4 of the Fifth Office Action, the Examiner presented the following analysis regarding the newly cited Ross:

Ross teaches that it is old and well known in the promotion art that website programmers increased visitor traffic by placing "links" within their websites to other websites in exchange for a reciprocal link (see col 1, lines 20-35).

For ease of reference, the Examiner's cited passage is reproduced below:

The World Wide Web began as a simple interface to the Internet using HTML (hypertext markup language) as a means of linking documents together. This allowed a researcher, for example, to embed "active" references in his or her documents that, if selected, would enable the reader to review the source of the reference first-hand. Programmers quickly capitalized on this technology, creating "web sites" which reflected less staid purposes, laying the groundwork for the literal "web" of content and interactive applications that exists today. In the early stages, website programmers increased visitor traffic by placing "links" within their websites to other websites, usually related in content or function, in exchange for a reciprocal link. Additionally, directories of websites, such as Yahoo, and search engines, such as WebCrawler, began to appear in an attempt to organize the content of the Internet so that its users could create "custom links pages" related to specific topics. (emphasis added)

Notably, the Examiner's cited passage does not teach all of the limitations for which the combination of Mason and Moore fail to teach. Specifically, the placement of the reciprocal link into a website occurs after the website has already been designed. Additionally, the Examiner's cited passage fails to teach creating a specific reciprocal site for the display of marketing elements of third party websites.

Appellant, therefore, respectfully submits that the Examiner has committed error by improperly determining the scope and content of the prior art, which is one of the Graham factual inquiries. Additionally, since the Examiner has failed to recognize that Ross does not teach all the limitations for which the Examiner is relying upon Ross to teach, the Examiner has

1 also committed error by failing to properly ascertain the differences between the applied prior art
2 and the claims at issue, which is another one of the Graham factual inquiries. Thus, the
3 Examiner has not set forth a prima facie case of obviousness based upon the Graham factual
4 inquiries, which are supported by substantial evidence.

5
6

7 The teachings of the prior art are not viewed through the lens of the Examiner's eye.
8 Instead, the teachings of the prior art must be viewed as one having ordinary skill in the art
9 would have viewed those teachings. In re GPAC Inc., 57 F.3d 1573, 1581 (Fed. Cir. 1995) ("[i]n
10 determining whether obviousness is established by combining the teachings of the prior art, the
11 test is what the combined teachings of the references would have suggested to those of ordinary
12 skill in the art") (internal quotations omitted). Also, the Examiner's analysis must avoid
13 impermissible hindsight. ATD Corp. v. Lydall, Inc., 159 F.3d 534, 546, 48 USPQ2d 1321, 1329
14 (Fed. Cir. 1998) ("[d]etermination of obviousness cannot be based on the hindsight combination
15 of components selectively culled from the prior art to fit the parameters of the patented
16 invention"); In re Vaidyanathan, Appeal No. 2009-1404 (Fed. Cir. May 19, 2010)("[o]bviousness
17 is determined as a matter of foresight, not hindsight")(non-precedential). Therefore, not only
18 must the prior art be viewed through the lens of one having ordinary skill in the art, the teachings
19 must be considered with regard to what they would have suggested to one having ordinary skill
20 in the art at the time of the invention.

21
22 The question asked of one having ordinary skill in the art at the time of the invention is
23 not just whether the claimed invention would have been obvious based upon the teaching of the

1 prior art. Additionally, the prior art must be reviewed, as a whole, to determine whether or not
2 the prior art discourages one having ordinary skill in the art from the claimed invention. "A
3 reference may be said to teach away when a person of ordinary skill, upon reading the reference,
4 would be discouraged from following the path set out in the reference, or would be led in a
5 direction divergent from the path that was taken by the applicant." *Ricoh Co., Ltd. v. Quanta*
6 *Computer, Inc.*, 550 F.3d 1325, 1332 (Fed. Cir. 2008) (quoting *In re Kahn*, 441 F.3d 977, 990
7 (Fed. Cir. 2006)).

8
9 In view of the case law discussed above, the Examiner's cited passage, however, does not
10 tell the whole story described by Ross. Referring to column 2, lines 52-61, Ross further
11 explained the following:

12 Such website owners began to sell the links they had previously offered for free in the form of
13 paid advertisements. Search engines and directories became increasingly popular for two main
14 reasons. First, the number of websites was growing astronomically, so it was becoming harder for
15 users to find what they wanted. Second, since reciprocal links were either going away or were
16 being replaced by links exclusively to non-competing websites, search engines and directories
17 were the only way to find multiple resources for a single topic. (emphasis added)
18

19 Notably, Ross teaches that the concept of "reciprocal links" were undesired. Specifically,
20 reciprocal links were either being eliminated altogether or being replaced by links exclusively to
21 non-competing websites. This is consistent with the teachings of the primary reference of
22 *Mason*, which describes how it is "possible for a national advertiser to purchase advertising
23 space ... on a plurality of related or non-related web pages" (see column 5, lines 15-18).

24
25 Referring to pages 4 and 5 of the Fifth Office Action, the Examiner presented the
26 following additional analysis regarding the newly cited Ross:

27 it would have been obvious to a person of ordinary skill in the art at the time the application was
28 made, to know that said second website would accept to display said banner ad in said second

1 website in exchange for reciprocal links displayed in said first website, as taught by Ross in order
2 to increase visitor traffic to said second website.
3

4 It is essential that "the decisionmaker forget what he or she has been taught at trial about the
5 claimed invention and cast the mind back to the time the invention was made ... to occupy the
6 mind of one skilled in the art who is presented only with the references, and who is normally
7 guided by the then-accepted wisdom in the art." W. L. Gore & Assoc. v. Garlock, Inc., 721 F.2d
8 1540, 1553 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The Examiner's analysis,
9 however, fails consider all the ramifications of the teachings of the applied prior art and how the
10 applied prior art would have discouraged one skilled in the art from the claimed invention. As
11 discussed above, Ross discourages the use of a reciprocal site. Instead, Ross would have
12 suggested to one having ordinary skill in the art at the time of the invention that, at the time a
13 website is being designed, that a location for a paid link should be included within the website
14 and not a reciprocal link.
15

16 Additionally, the Examiner's alleged motivation of "in order to increase visitor traffic to
17 said second website" would not have motivated one having ordinary skill in the art, who is
18 considering how to design a first website, to arrive at the claimed invention. The creator of the
19 first website has no vested interest in increasing the visitor traffic to the second website. On the
20 contrary, the creator of the first website has a vested interest in getting paid for the visitor traffic
21 that visits the subsequently published first website. Both the primary reference of Moore and
22 Ross discuss how this can be achieved. Specifically, the creator of the first website is paid for
23 visitor traffic from paid third party ads/links that are located in the first website. The creator (or
24 owner) of the first website, however, does not get paid for a reciprocal site. Therefore,
25 Appellant's position is that had the applied prior art been considered, as a whole, by one skilled

1 in the art at the time of the invention, one skilled in the art would not have arrived at the claimed
2 invention. Instead, one having ordinary skill in the art would have followed the teachings of
3 both Moore and Ross to included paid links within the website.

4
5 Conclusion

6 Based upon the foregoing, Appellant respectfully submits that the Examiner's rejection
7 under 35 U.S.C. § 103 based upon the applied prior art is not viable. Appellant, therefore,
8 respectfully solicits the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 103.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: December 13, 2010

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

4. A method of assisting a website designer in establishing an arrangement between a first website being designed by the website designer and a second website in order to market the first website at the second website upon the activation of the first website on the internet, the method comprising:

during design of the first website, receiving information at a user interface indicating a type of an element for marketing that is to be displayed at the second website, and information specifying the second website at which the element is to be displayed;

saving the information at a first database that is coupled to the user interface;

obtaining the element for marketing of the type indicated;

causing the display of the element for marketing at the second website when the first website is activated with respect to the internet, wherein the element for marketing includes at least one of a banner ad concerning the first website and a link to the first website;

determining whether a reciprocal site for the display of at least one marketing element of a third party website exists in the first website being designed; and

creating the reciprocal site for the display of the at least one marketing element of the third party website when the reciprocal site does not yet exist in the first website being designed.

5. The method of claim 4, further comprising:

when the element for marketing the first website is a banner ad concerning the first website, causing the sequential display at the reciprocal site of the first website of a plurality

banner ads respectively concerning a plurality of third party websites, when the first website is activated with respect to the internet.

6. The method of claim 4, further comprising:

when the element for marketing the first website is a link to the first website, causing the display at the reciprocal site of the first website of a plurality of links to the plurality of third party websites, when the first website is activated with respect to the internet.

22. A method, within a computer hardware website implementation system, of establishing a reciprocal arrangement between a first website and a preexisting second website, comprising:

registering the second website with the website implementation system;

receiving, by the website implementation system, a request by a first user to implement the first website;

receiving, by the website implementation system, a selection by the first user as to a second functional marketing element to be activated on the second website;

establishing, by the website implementation system, a reciprocal site in the first website for a first functional marketing element; and

upon the first website being activated with respect to the internet, the computer website implementation system implementing the reciprocal arrangement by causing

(i) the first website to implement the first functional marketing element, and

(ii) the second website to implement the second functional marketing element,

wherein

the first functional marketing element directs, via the internet, a second user of the first functional marketing element to the second website, and

the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.

25. A computer hardware website implementation system for establishing a reciprocal arrangement between a first website and a preexisting second website, comprising:

at least one processor, the at least one processor configured for

registering the second website with the website implementation system;

receiving a request by a first user to implement the first website;

receiving a selection by the first user as to a second functional marketing element to be activated on the second website;

establishing a reciprocal site in the first website for a first functional marketing element; and

implementing, upon the first website being activated with respect to the internet, the reciprocal arrangement by causing

(i) the first website to implement the first functional marketing element,

and

(ii) the second website to implement the second functional marketing

element, wherein

the first functional marketing element directs, via the internet, a second user of the first functional marketing element to the second website, and

the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.

26. The website implementation system of claim 25, further comprising
a database of registered websites.

29. A computer program product including a computer-readable storage medium having stored therein computer usable program code for establishing a reciprocal arrangement between a first website and a preexisting second website, the computer usable program code, which when executed by a computer hardware implementation system, causing the computer hardware implementation system to perform:

registering the second website with the website implementation system;

receiving a request by a first user to implement the first website;

receiving a selection by the first user as to a second functional marketing element to be activated on the second website;

establishing a reciprocal site in the first website for the first functional marketing element; and

upon the first website being activated with respect to the internet, implementing the reciprocal arrangement by causing

(i) the first website to implement a first functional marketing element, and

(ii) the second website to implement the second functional marketing element,

wherein

the first functional marketing element directs, via the internet, a second user of the first functional marketing element to the second website, and

the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

On June 15, 2009, a Decision on Appeal was rendered in the present Application, a copy of which is attached hereto. On September 13, 2009, a Decision on Request for Rehearing was rendered in the present Application, a copy of which is attached hereto. Appellant is unaware of any other related appeals and interferences.